

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

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| Hickman Storage, LLC, Petitioner-Appellant, v. Polk County Board of Review Respondent-Appellee. | ORDER Docket No. 12-77-0254 Parcel No. 312/03255-000-000 Docket No. 12-77-0255 Parcel No. 312/03257-000-000 |
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On May 20, 2013, the above-captioned appeal came before the Property Assessment Appeal Board. The hearing was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. Brad Vander Linden represented the Appellant, Hickman Storage, LLC. Assistant County Attorney David Hibbard represented the Polk County Board of Review. The Appeal Board having reviewed the record, heard the testimony, and being fully advised finds:

Findings of Fact

Hickman Storage, LLC is the owner of property located at 6715 Hickman Road in Urbandale, Iowa. The real estate was classified commercial on the January 1, 2012, assessment. The two parcels were assessed as follows:

| <u>Docket</u> | <u>Parcel</u> | <u>Site Size</u> | <u>2012 Assessment</u> |
|---------------|-------------------|------------------|------------------------|
| 12-77-0254 | 312/03255-000-000 | 3.456 acres | \$263,400 |
| 12-77-0255 | 312/03257-000-000 | 1.936 acres | \$316,200 |

Hickman Storage protested the assessments to the Polk County Board of Review on the ground that the properties were misclassified under Iowa Code section 441.37(1)(a)(3). The Board of Review denied the protest.

Hickman Storage then filed an appeal to this Board reasserting its claim.

According to the property record cards, Hickman Storage purchased parcel 312-03257-000-000 on April 8, 2010, for \$316,250. At the time of purchase it was improved with a mobile home park. Hickman Storage purchased the adjoining parcel, 312-03255-000-000, on May 28, 2010, for \$275,000. Hickman Storage removed the mobile home park and graded the property in early 2011.

Brad Vander Linden testified on behalf of Hickman Storage. He sent a letter to the Polk County Assessor in February 2012 requesting an agricultural classification for the subject properties. The request indicated that all of the site improvements had been removed, top-soil had been stripped and re-spread on both parcels, and the sites had been planted with alfalfa in early May 2011. He further indicated the work had been completed in accordance with the City of Urbandale permits and “meets the requirements for final stabilization of the site with uniform perennial vegetative cover – which is alfalfa for hay crop.” Vander Linden attached the following documentation to his letter to support the request for agricultural classification.

1. Application for Agricultural Classification of Lands for two contiguous parcels in Urbandale
2. Assessor parcel cards from Assessor website
3. Boundary survey of the 5.4 acre parcels
4. Executed farm lease
5. Invoice alfalfa crop seeding and site soil stabilization

Vander Linden also provided a 2011 Schedule F for Hickman Storage, LLC, which shows an expense of \$2586 for machine work and for seeding. He explained the City of Urbandale required the removal of cement and debris, as well as the leveling and seeding of the ground for erosion control.

Vander Linden provided a lease with Dale Escher Farms and testified it was his intent to profit from an alfalfa crop. The lease began March 1, 2011, and ends February 28, 2014. The cash rent due in 2012 was in the amount of \$200; and the annual cash rent for 2013 and 2014 is \$405. The lease also states the owner and operator understand the hay crop will not be mature for four years from the 2011 planting by the owner. We note that if the alfalfa hay crop does indeed take four years to

mature, it may not produce a crop before the lease expires and the operator would receive no benefit from leasing the property.

Lastly, Vander Linden also submitted evidence of a Farm Service Agency (FSA) number assigned in May 2013 (Exhibit 5). We note the FSA data submitted by Vander Linden indicates 5.36 acres of farmland, but 0.00 acres of cropland for the subject sites. Vander Linden said the use of the subject site is pasture; however, also noted a city of Urbandale ordinance prohibits farm animals. He noted Escher Farms mowed the subject sites “a couple of times” in 2012 but that to date no crop has been harvested. He estimated fifty percent of parcel 312/03257-000-000 was suitable to grow a crop.

When questioned, Vander Linden testified that he intends to build a self-storage facility on the property in the future and it is on the planned unit development (PUD) master plan.

Tammy Berenguel, an agricultural appraiser with the Polk County Assessor’s Office, testified for the Board of Review. She visually inspected the subject sites in February 2012, May 2012, and again in May 2013. Berenguel testified she saw very little, if any, alfalfa growing at any time, only grass and dandelions. She also testified there was no crop produced in 2011 and there was no agricultural use as of January 1, 2012.

Additionally, the Board of Review submitted photos of the subject property taken on April 19, 2013. While it appeared some grass was growing we did not see any evidence of alfalfa in the photos. Furthermore, the photos showed a long gravel driveway, piles of fill dirt, sewer pipes, electrical wires, rocks, and debris strewn throughout the site. In Berenguel’s opinion, the 1.936-acre parcel was “very rough and could not be planted.” We found Berenguel to be a knowledgeable and credible witness.

In conclusion, there is conflicting evidence and testimony as to the existence of agricultural activity on the subject property. Although Vander Linden testified he planted alfalfa on the site, Berenguel’s testimony indicated a lack of alfalfa on the property and photographs show the site

contains gravel, debris, and other materials. Vander Linden's own testimony established the property has not yet produced a crop. For these reasons, we find Hickman Storage has not met its burden of demonstrating the property should be classified agricultural.

Conclusion of Law

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. § 441.21(1)(b). However, agriculturally classified property it is to be valued based on its productivity and net earning capacity. § 441.21(1)(e).

The Iowa Department of Revenue has promulgated rules for the classification and valuation of real estate. *See* Iowa Admin. Code r. 701-71.1. Classifications are based on the best judgment of the

assessor following the guidelines set out in the rule. r. 701-71.1(1). Boards of Review, as well as assessors, are required to adhere to the rules when they classify property and exercise assessment functions. r. 701-71.1(2). Property is to be classified “according to its present use and not according to any highest and best use.” R. 701-71.1(1). There can be only one classification per property. r. 701-71.1(1).

By administrative rule, agricultural property

shall include all tracts of land and the improvements and structures located on them which are in *good faith used primarily for agricultural purposes* except buildings which are primarily used or intended for human habitation as defined in subrule 71.1(4). Land and the nonresidential improvements and structures located on it shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest or fruit trees, the rearing, feeding, and management of livestock, or horticulture, all for *intended profit*.

...

Agricultural real estate shall also include woodland, wasteland, and pastureland, but only if that land is held or operated in conjunction with agricultural real estate as defined in this subrule. r. 701-71.1(3).

Conversely, commercial property

shall include all lands and improvements and structures located thereon which are primarily used or intended as a place of business where goods, wares, services, or merchandise is stored or offered for sale at wholesale or retail. Commercial realty shall also include hotels, motels, rest homes, structures, consisting of three or more separate living quarters and any other buildings for human habitation that are used as a commercial venture. r. 701-71.1(5).

Based on the evidence and testimony, we find Hickman Storage has not established the property is being presently used in good faith for agricultural purposes for intended profit. While Vander Linden testified the site was planted with alfalfa, Berenguel’s testimony indicated that little, if any, alfalfa is growing on the site and pictures of the property shows it contains debris and other materials. Although the alfalfa was planted in May 2011, Vander Linden admitted the property has yet to produce a crop. Further, one-half of parcel 312/03257-000-000 is incapable of producing a crop. Because it is arguable whether a crop actually exists on the property and Vander Linden’s own

testimony indicated no crop has ever been harvested, we cannot conclude the subject property's use is principally devoted to the raising and harvesting of crops for intended profit. Therefore, we find the subject property's classification should remain commercial.

THE APPEAL BOARD ORDERS the assessment of the properties of Hickman Storage, LLC located at 6715 Hickman Road, Iowa, as set by the Polk County Board of Review is affirmed.

Dated this 10th day of June, 2013.

Stewart Iverson

Stewart Iverson, Presiding Officer

Jacqueline Rypma

Jacqueline Rypma, Board Member

Karen Oberman

Karen Oberman, Board Member

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Certificate of Service

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on June 10, 2013.

By: ☒ U.S. Mail ☐ FAX
☐ Hand Delivered ☐ Overnight Courier
☐ Certified Mail ☐ Other

Signature _____

Jean Cooper